

## Planning Board Meeting Minutes

May 2, 2001

Approved 05-16-01

Robert White called the meeting to order at 6:31P.M. He introduced the members present: James Henderson, John Papacosma, Roland Weeman, who has been re-appointed as a full Board member, and Howard Nannen, who has been appointed a full Board member. Mr. White has been appointed an associate member. Linda Toothaker had contacted the Board earlier saying she would be joining the meeting at 7P.M. Planner Tony Dater was also present. Dawnna Black taped the meeting for the Harpswell Community TV Station.

**The published agenda for the meeting was:** (1) Election of Officers. (2) C R Rooney, L.L.C., Site Plan Review, Tax Map 13-9, Harpswell Neck Road, Harpswell (Return from 04-18-01 meeting). (3) Donald and Roberta Robertson, Reconstruction of Non-Conforming Structure, Shoreland Residential, Tax Map 30-40, Robertson Road, Orr's Island, Harpswell (Return from 04-18-01 meeting). (4) Jeffrey Darling and Peter Darling, Site Plan Review, CF1, Tax Map 64-10, Oakhurst Island, Harpswell. (5) Julia Soper, Site Plan Review, CF1, Tax Map 64-8, Oakhurst Island, Harpswell.

The Board held **election of officers**. Nannen nominated James Henderson for the office of Chairman. Seconded by Weeman. **Carried 4-0**. Weeman nominated John Papacosma for the office of Vice-Chair. Seconded by Nannen. **Carried 4-0**. Papacosma nominated Linda Toothaker for the office of Secretary for Board Site Visits. Nannen seconded. **Carried 4-0**.

Chairman Henderson said that the Board is working on Board by-laws. They had last worked on this project on August 9, 2000.

**Minutes of April 18, 2001-** Papacosma requested that the spelling of Arial on page 5 be checked and corrected if necessary. Nannen asked that the spelling of reparian on page 3 be checked and corrected if necessary. Nannen also asked that "side" be added to "line" on page 2. In addition, Nannen requested that his statement of "This is an accurate document" on page 5 be changed to "Is this an accurate document?" James Henderson, referencing page 6, said that (regarding Mr. Bannon's statement that the Board had already given preliminary approval of the proposed plan), "The Board has not given preliminary approval to Envision Realty, L.L.C.'s proposal." Henderson stated that the Board had accepted Envision Realty, L.L.C.'s preliminary application as complete, but had not approved the preliminary plan. Weeman made a motion to accept the minutes of April 18, 2001 as corrected. Nannen seconded. **Carried, 5-0.**

Linda Toothaker joined the meeting. Henderson explained the Planning Board process to the public. He said that the Board holds a hearing where people can state their opinions concerning the case being considered by the Board. Then the Board closes the hearing, discusses the case, applies the ordinances and the law to the proposal, listens to the applicant and/or the representative, and then makes a decision.

**C R Rooney, L.L.C.**- Henderson said the Board had received the updated waste hauler certificate from Charles Rooney as requested at the last meeting. Mr. Rooney presented the Board with three copies of the site plan map, which they signed.

**Robertson**- James Herrick, architect, presented the proposal of Donald and Roberta Robertson for the Reconstruction of a Non-Conforming Structure in a Shoreland Residential area on Robertson Road, Orr's Island. This is a return case from the April 18, 2001 meeting.

Herrick said that the reconstructed house will be a summer home for the Robertsons. He said that there will be an increase of volume and area, but there would not be an increase in non-conformity. The new home is not closer to the shoreline than the existing house. Weeman asked for the new plan showing the setbacks and the contour lines, as requested by the Board at the April 18<sup>th</sup> meeting. Herrick presented the new plans and the Board reviewed them, along with William Mair's letter which provides septic system specifications. Selectman George Swallow said that if the Board approves the proposal, the Codes Enforcement Officer (CEO) would visit the property and review the proposed septic system several times. And, if he finds that it won't work, he will put a stop work order on the project.

Henderson wanted to know if the proposed house had been set back to the greatest practical extent. And, Nannen stated, "We should treat you no more favorably than new construction would be treated." Henderson referenced Shoreland Zoning Ordinance (SZO) 10.3.2.1 (Non-Conforming Structures) and the Board discussed the location of the septic system in relation to the SZO. Donald Robertson said that they would make sure that the new structure and septic system comply with setbacks, and that they would not proceed until the CEO approves it. Henderson said the Board needs a revised plan showing that everything, including the deck, is within the 75' setback. He said the Board also requests a statement from the CEO saying that the septic system meets all of the requirements for six bedrooms (three in the proposed reconstructed house and three in the house in back).

Weeman stated, "I make a motion that we table the proposal of Donald and Roberta Robertson to the June 20<sup>th</sup> meeting and that we require a revised plan that indicates the totality of the building within the 75' setback and an approval of the septic system by our Codes Enforcement Officer, that it meets the six bedroom requirements." Nannen seconded. **Carried 5-0.**

**Jeffrey Darling and Peter Darling**- Beverly Wallace, of Redfish & Associates, is representing Jeffrey Darling and Peter Darling. She said this is an application for an after-the-fact approval of summer marina floats, nine of which have been in the water for years (since the 1950s), and 9 of which are new since 1995. The Darlings have made an application to the Department of Conservation. White asked Selectman Swallow what the selectmen would be considering for approval concerning the floats. Swallow said the selectmen will consider approving what's in the water, and the Board will consider approving what's on the land.

Wallace said the Darlings own three of the nine commercial boats that tie up at the floats. 1944 sq. ft. of the float space are used by the lobstermen and 1224sq. ft. are used by seasonal boaters. The majority of seasonal boat usage is in the early evening and the traffic is basically broken up

into the two groups, morning and evening. There are now twenty-two slips and fifteen parking spots, including two spots for the owners. Henderson said there will be an intensification of use and cited the Site Plan Review Ordinance (SPRO). Henderson said there was a change of use many years ago, and how the Board approves it now should be maintained in the future. Nannen said the Board had talked to Peter Darling and that he had indicated commercial fishing is diminishing in Harpswell and that there is a steady erosion of use by commercial boats. The Darlings supplement their business with seasonal boats. Nannen said this is reality and others are probably experiencing the same problem.

Henderson asked Dater if he thought this was a complete application and Dater said he felt that it was complete. Weeman stated, "I move that we accept it (the application of Jeffrey Darling and Peter Darling) as a complete application, and the Site Plan Review Ordinance says that we can ask for additional information." Nannen seconded. **Carried 5-0.**

Henderson asked for public comment. Dave Woodman lives on Oakhurst Island Road and said that he has a sailboat mooring and that he has kept his tender on the Darling wharf for three years. He said that if they lose their wharf, he would have to find another way to reach his boat. He said he supported a non-commercial use of the wharf. Selectman Swallow said that the Board should have the Harbor and Waterfront Ordinance to reference concerning parking, and the Board agreed. Lloyd Weaver said that he has had a slip at the Darling wharf for years and that he would be devastated if he didn't have the wharf to use.

Henderson and the Board reviewed Site Plan Review Ordinance 15 (Approval Standards) and notable points of the discussion follow: 15.7.1- Weeman said the Board needs to look at the Harbor and Waterfront Ordinance concerning parking; 15.10 (Erosion Control)- Weeman said there will be wheel stops on the parking lot; 15.17- Henderson said, "The more boats you have, the more discharge there is." Beverly Wallace said there is no hazardous waste on the boats and no fuel will be supplied to the boats; 15.20- Wallace said the elevation is 9, Zone C. White said, "It's above high tide." Henderson said that the Bureau of Public Lands letter is needed. Weeman stated, "I move that we approve the application with conditions, 1. That it meets the parking requirements of the Harbor and Waterfront Ordinance because of more intense use, 2. That parking blocks are used to protect the grass buffer area, and 3. That evidence of a letter from the Bureau of Public Lands be presented to the Codes office. Henderson said the Board needs to consider the requested waivers and Weeman withdrew the motion. The Board discussed the waivers that were requested by the applicants, and after the discussion Henderson stated, "I move that we approve the following waivers: 14.2.2, 14.2.8, 14.2.9, 14.3.9, and 14.3.10." Nannen seconded. **Carried 5-0.**

Henderson stated, "We are reconsidering Mr. Weeman's original motion, and request that all these conditions be approved by the Codes Enforcement Officer in writing, and that if he approves them, the application is complete." Nannen seconded. **Carried 5-0.**

After further discussion by the Board, Henderson stated, "I move that the Board finds that the proposed change in use of the previously approved Site Plan (Jeffrey Darling and Peter Darling's) conforms to the requirements of the Basic Land Use Ordinance 13.4.7." Nannen seconded. **Carried 5-0.**

**Soper-** Julia Soper presented her case. She wants to build a 10' X 16' bait cooler on her wharf, which is in CF1. Henderson said that the Board needed to review the SPRO and the SZO. Henderson asked Dater if he thought the application was complete. Dater responded that he felt that it was, and that this would be intensifying commercial use. Dater also stated that all of SPRO 14, except for 14.2.2, 14.3.2, and 14.3.1, are not applicable. The Board reviewed all of SPRO 14. Weeman said, according to SPRO 14.1.2, the Board needs the square footage of the lot. Weeman said the Board needs a copy of all existing Right of Ways and covenants according to SPRO 14.1.8, and a complete copy of the deed (SPRO 14.1.7). Henderson said that it was a complete application if the requested paperwork is already in Julia Soper's 1998 file in the CEO's office at the Town Office. The Board discussed whether or not to approve a waiver of SPRO 14 because of it not being applicable or because the information had already been provided by Soper.

Henderson asked for public comment. Jeffrey Darling said that in 1998, when the Sopers had come to the Board for approval, Julia Soper had said that the Sopers had a prescriptive right. Mr. Darling said that they don't, but that she's using it for a right of way. Henderson told Darling that the Board needs evidence that the applicant has a ROW, and that when there's an argument, the Board can approve it or not, as long as the Board has evidence of ownership of the ROW. He said the Board does not decide civil issues. Henderson stated, "I move that this application is complete, except for 14.1.7, 14.1.8, 14.2.4 (of the SPRO), and that we'll waive all of the others because they are not applicable or have been provided." Weeman seconded. **Carried 5-0.**

The Board reviewed SPRO 15 and notable points of discussion follow: 15.7.1- Nannen said the Board could say there is no increase in use by the approval of this proposal. Brian Soper said that the parking lot has been built according to Maine DEP standards; 15.17- Soper said they have and sell diesel to family, not the public, and that they are licensed by the DEP and the State fire marshal. Henderson asked for public comment and Peter Darling said that the Soper's property should be surveyed. Henderson stated, "I move that the Board finds that this proposal has met the requirements of the Site Plan Review Ordinance, except 15.1, 15.2, 15.7, and that all other subsections of 15, the Board finds do not apply to this proposal, and with the following conditions: 1. After the testimony of Earland Darling, he needs to make a written statement that he is 1/4 owner and that he approves of this proposal. 2. That a copy of the temporary restraining court order from Cumberland County, dated June 20, 2000, be placed in this file. 3. That a complete and correct copy of the deed be provided to the Codes Enforcement Officer. Once the Codes Enforcement Officer has determined that the documents have been supplied, and he provides a written statement, then the applicant can go ahead with the proposal. In addition, the Board finds that the proposed use meets the requirements of the Basic Land Use Ordinance 13.4.7, which incorporates Shorland Zoning Ordinance 15, and the Board finds no conflicts with that section either." Weeman seconded. **Carried 5-0.** Henderson adjourned the meeting at 10:50PM.

Respectfully submitted,

Debora A. Levensailor  
Planning Assistant